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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Revision of Part 22 of the) CC Docket No. 92-115
Commission's Rules Governing)
the Public Mobile Services)

**COMMENTS OF THE PERSONAL
COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA") hereby submits its comments in response to the *Further Notice of Proposed Rulemaking* in the above-captioned docket.¹ PCIA, whose membership includes, *inter alia*, a large number and variety of Part 22 licensees, has been an active participant throughout the Commission's consideration of revisions to Part 22 of the Rules. In these comments, which should be construed as a supplement to PCIA's comments and reply comments on the initial *Notice of Proposed Rulemaking* in this proceeding,² PCIA focuses on the proposals concerning 931 MHz paging applications.

The *Further Notice* proposes a dramatic overhaul of the 931 MHz licensing procedures as part of the Commission's effort to eliminate the backlog of 931 MHz paging applications that has occurred in certain markets.³ The Commission's

¹ Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92-115 (May 20, 1994) (*Further Notice of Proposed Rulemaking*) ("*Further Notice*").

² Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, 7 FCC Rcd 3658 (1992) (*Notice of Proposed Rulemaking*) ("*Notice*").

³ The *Further Notice* points out that there are approximately 700 applications pending for 931 MHz licenses. *Further Notice* ¶ 17 n.33.

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proposals would be applied to future filings as well as pending applications, which would be defined to include any applications that have been granted, denied, or dismissed and are the subject of petitions for reconsideration or applications for review.⁴ Significantly, the new proposals would apply in all markets, not just those in which the problems the proposal is intended to alleviate have occurred.

As PCIA understands the proposals set forth in the *Further Notice*, the Commission's plan would work as follows:

- All applicants for 931 MHz paging authorizations would be required to identify a specific frequency; this frequency would have to be available at the time the application is filed, under the standards generally applied under Part 22 as it now exists or as may be amended in response to the *Notice*.⁵
- Applications acceptable for filing would be placed on public notice, triggering a 30 day window for the filing of mutually exclusive applications.⁶ In general, applications proposing operations on the same frequency and with locations within 70 miles of another proposed frequency would be considered to be mutually exclusive.⁷
- The set of mutually exclusive applications would be considered as a single processing group; applications accepted for filing after July 26, 1993, would be subject to the competitive bidding process.⁸
- Applications for 931 MHz paging frequencies pending at the time the Commission adopts final rules would be treated under a one time

⁴ *Id.* ¶ 15.

⁵ *Id.* ¶ 16.

⁶ *Id.*

⁷ *Id.* ¶ 16 n.26.

⁸ *Id.* ¶ 16.

processing standard.⁹ These applicants would be given 60 days from the effective date of the final order in this proceeding to amend their applications to specify frequencies for which they seek authorization.¹⁰ This requirement would even apply to applications that identified a "preferred" frequency and that have been subject to a full public notice and petition to deny cycle.

- Failure to amend a pending application to list a specific frequency would result in its dismissal.¹¹ All amended pending applications would be placed on public notice, with an opportunity for the filing of petitions to deny within 30 days of that notice.¹²
- All amended pending applications as well as newly filed applications received within 60 days of the effective date of the final order and that are mutually exclusive with one another would be considered together as a single processing group. These applications would be subject to the competitive bidding process.¹³
- The Commission also contemplates departing from its usual presumption that competitive bidding procedures generally will not be applied to mutually exclusive applications to modify existing licenses. In the context of 931 MHz paging, an application anywhere on a new frequency and a proposal to locate a new facility more than two kilometers¹⁴ from any existing facility operating on the same frequency would be deemed to be an initial application.¹⁵ The definition of a 931 MHz modification application would be limited to: (1) a proposal for a new location that is

⁹ *Id.* ¶ 17.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* The *Further Notice* does, however, request comment whether the Commission should instead employ lotteries for the purpose of processing applications groups that include amended pending applications. *Id.*

¹⁴ While the *Further Notice* indicates that two kilometers is equivalent to 1.6 miles, PCIA points out that two kilometers in fact translates to 1.24 miles.

¹⁵ *Id.* ¶ 18.

two kilometers or less from a previously authorized and fully operational base station licensed to the same licensee operating on the same frequency; (2) an application for a change of location within two kilometers of an existing station licensed to the same entity on the same frequency; or (3) an application proposing a technical change that would not increase the service contour.¹⁶

- The Commission requests comments on the legality and policy implications of employing competitive bidding for mutually exclusive initial and modification applications.¹⁷ In the event that competitive bidding is not adopted for such situations, the Commission would use a first come, first served procedure to process 931 MHz paging modification applications, whereby only mutually exclusive modification applications received on the same day would be designated for comparative hearing.¹⁸ Major modification applications would continue to be listed in public notices, with a thirty day period for the filing of petitions to deny.¹⁹

The Commission concludes that its proposed scheme would eliminate the backlog in pending 931 MHz paging applications and would help to ensure that "future channel assignments will be made in a fair and consistent manner."²⁰ The Commission further points out its specific belief that "the public interest in expeditious licensing and provision of service far outweighs any potential unfairness to pending 931 MHz applicants that our proposed rule change might cause."²¹

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* ¶ 17.

²¹ *Id.* ¶ 17 n.34.

PCIA believes that the Commission should proceed to adopt policies addressing the 931 MHz licensing situation through building consensus with the industry. In that regard, PCIA has undertaken efforts to develop a plan supported by members of the paging/messaging industry for the appropriate licensing mechanisms to be deployed in the 931 MHz frequencies.

There is complete agreement that a long term solution establishing overall licensing policies is required, to insure that the processing gridlock that has occurred in some markets does not reoccur in other areas of the country. At the same time, there is an immediate and pressing need to reach a short term solution in the congested markets where, PCIA understands, the Commission is not currently processing applications. As discussed below, while significant agreement has been reached within the industry, full consensus on the parameters of the long term and short term approaches has not yet emerged.

The industry has reached agreement, however, that notwithstanding the Commission's laudable goals, the plan proposed in the *Further Notice* simply is untenable and will greatly disserve the public interest. PCIA fears that, rather than breaking the logjam, the Commission's proposal will in fact lead to further delays in the initiation of service. A number of 931 MHz applications, each specifying a preferred frequency, have been placed on public notice, and are available for processing at this time. Under the Commission's proposal, those applicants in effect will have to begin anew the licensing process. Even if an applicant now specifies the

same frequency listed as its preference, the application will again be placed on public notice and will be subjected to petitions to deny, even if no petitions were filed in response to the application's prior public notice.²²

Moreover, the procedure outlined in the *Further Notice* for handling the currently pending applications appears likely to trigger an avalanche of 931 MHz filings, many by potentially speculative applicants.²³ PCIA also anticipates, with this flood of filings, the creation of interlocking daisy chains of mutually exclusive applications, rendering it difficult in some situations to identify all of the mutually exclusive applications that should be processed together in a single group.

The *Further Notice* proposals also would seriously hamper the ability of existing 931 MHz licensees to engage in a rational modification or expansion of their systems. The very narrow proposed definitions of modifications that would not trigger competitive bidding possibilities (if that mechanism is adopted by the Commission) could largely fix the service areas of many operators. This in turn would hinder the ability of systems to respond effectively to customer needs.²⁴

²² Indeed, under the revised plan set out in the *Further Notice*, many more entities would appear to have an incentive to file petitions to deny, regardless of their validity.

²³ To the extent the Commission decides to employ competitive bidding procedures, the number of purely speculative applicants will be reduced.

²⁴ In its comments on the *Notice* in this proceeding, PCIA proposed that 931 MHz licensees be permitted to move a base station 2 kilometers or less from the original coordinates and not closer to a co-channel licensee without having to obtain prior Commission approval. Comments of Telocator, CC Docket No. 92-115, at 43-44 (filed Oct. 5, 1992) ("Part 22 Rewrite Comments"). PCIA's proposal sharply contrasts with the proposal contained in the *Further Notice*, because under that proposal 931 MHz operators would still be required to obtain prior FCC approval for such limited changes -- they simply would avoid falling under the competitive bidding rules.

Finally, the Commission's plan appears to have been developed in response to the fact that there currently are a limited number of markets where applications for authorization far exceed the number of channels available for licensing. The Commission's proposal to revamp a system that works well in most parts of the country merely to address a handful of existing problems underscores the paging industry conclusion that different long term and short term solutions are necessary. By no means should the Commission apply solutions suited to the problems of congested areas across the board.

On a long term basis, there is general industry agreement that 931 MHz paging frequencies should be licensed on a market area basis. PCIA previously recommended such an approach in its comments on the *Notice* in this docket,²⁵ and is reiterating this recommendation in its concurrently filed comments on the *Further Notice of Proposed Rulemaking* with respect to the Commercial Mobile Radio Service.²⁶ This licensing method would be a more effective means for expediting service to the public, providing flexibility for licensees to engage in rational build-out plans, and simplifying applicable regulatory requirements.

PCIA recognizes, however, that movement to market area licensing requires the specification of the appropriate policies and procedures. For example, the market areas must be determined and licensing mechanisms adopted. This requires balancing a

²⁵ *Id.* at 8.

²⁶ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, FCC 94-100 (May 20, 1994).

number of factors, including expeditious licensing and minimization of mutually exclusive applications. Also, appropriate transition steps must be identified. As the Commission might guess, there are a number of possible resolutions to implementing the market area licensing. PCIA nonetheless is hopeful that it will be able to achieve a consensus proposal within a reasonably short time frame, and is committed to forging such consensus and working with the Commission to see it promptly implemented.

In many respects, the short term solution is even more difficult to assess because of the host of difficult issues presented by the current status of existing applications. PCIA members are considering a number of potential solutions but have not yet developed a fully formed plan.

PCIA is continuing to work with its members to develop the details of both the long term and short term solution proposals. PCIA shares the Commission's desire to address the backlog of 931 MHz paging applications and to permit the prompt initiation of service over currently unused frequencies. Indeed, PCIA's members are among those most harmed by the current impasse in 931 MHz licensing in certain markets. As detailed above, however, PCIA believes that the Commission's proposal worsens some existing problems and may create its own set of issues. PCIA accordingly will strive to assist the Commission in identifying acceptable regulatory procedures for

processing and granting 931 MHz applications that fully comply with the Communications Act, fulfill the public interest, and can be implemented in a timely manner.

Respectfully submitted,

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